

Written Statement of  
**Philip L. Ellison**

Law Student, Michigan State University College of Law

BEFORE THE JUDICIARY COMMITTEE  
OF THE MICHIGAN HOUSE OF REPRESENTATIVES  
MARCH 10, 2010

THE HONORABLE MARK MEADOWS, CHAIRMAN

***Re: House Bill 5783; College Student Juror Deferment***

Mr. Chairman and Members of House Judiciary Committee, my name is Philip L. Ellison and I am a third year law student (3L) at Michigan State University College of Law ("Law School") where I also serve as Co-Editor in Chief of the JOURNAL OF BUSINESS & SECURITIES LAW. I want to thank you for the opportunity to appear before this Committee to advocate my support of House Bill 5783 and to share my story with you.

I am a long-time student at Michigan's colleges and universities. I attended Lake Superior State University for my undergraduate bachelors and associate degrees, Central Michigan University for my graduate degree in business administration, and Michigan State University College of Law for my law degree. I know first-hand the responsibilities and duties placed on students at all levels of education.

During the Fall 2009 semester, I was called for jury service in Kalamazoo County's 9th Circuit Court. The date to which I was ordered to appear was in the middle of the academic semester. I contacted officials in the Law School's Office of Student Affairs to inquire about the policies and procedures to fulfill my civic obligation while still meeting all mandatory time requirements for attending law school. Much to my surprise and concern, time in compulsory legal service as a juror is not academically excused.

**This policy, along with a lack of explicit protection under state law, could have cost me \$25,000 in tuition and fees, delayed my graduation from law school, prevented me from sitting for the Bar Exam, and prevented me from becoming an officer of the court within the state of Michigan.**

Included with this written statement is a substantive copy of the original letter written to Chairman Meadows, various members of this Committee, and your various counterparts in the Michigan Senate. It fully addresses the entire situation in great detail.

Without getting into every detail of my particular case in this written statement, it suffices to say that state law and public policy must fully support students attending



college. I am of the personal belief that anything obstructing the educational process is worthy of stringent review by our elected leaders who must help find a necessary solution.

House Bill 5783 takes an important step in resolving the problem. The bill, as currently written, permits college students to fulfill *both* their duties of education and civic service through the use of *mandatory deferment* of jury service until the end of the school year for full time college students.

If a college student is called for jury service under current law and has unyielding professors or rigid college attendance policies, the only hope for the college student is to petition the court for excusal or deferment on the grounds of material injury or hardship. Some individuals are of the mistaken belief that a quick call to the court or a letter to the judge will “take care of the problem.” Even worse, some inaccurately suggest most lawyers and judges do not want college students to serve on Michigan juries. In truth, college students are at the judge’s wide and subjective discretion when it comes to jury service.

Case-in-point, one week ago today, the *Detroit Free Press* reported a story about a Michigan judge’s strong stance on jury service. Part of the article noted that a Wayne State University medical student was detained because he sought relief from jury service due to midterm exams and educational obligations.

This is just one story of many I have heard in recent weeks while researching this issue. The competing interest of civic and educational duties is not an unusual occurrence—it quietly and regularly happens in courts and on college campus across our state.

In short, being called for jury service during the academic semester has *real* educational and civic costs to both the student and to the state as a whole. Current state law puts stress and uncertainty on college students to balance rigid college policies containing harsh consequences with contempt of court charges, fines and possibly jail time.

House Bill 5783 is the needed legal correction to deficient state law.

I encourage the Members of this Committee to support this bill and swiftly take the necessary steps to enact this important change so that Michigan’s college students will not and cannot experience the same fate of actual or potential punishment in proudly serving their state and their educational pursuits.

Thank you.



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# PHILIP L. ELLISON

October 23, 2009

The Honorable Mark S. Meadows  
Chairman, Judiciary Committee  
Michigan House of Representatives  
P.O. Box 30014  
Lansing, MI 48909

***Re: College Student Juror Deferment; Postponing Jury Service for College and Law Students Due to Potential High Human Costs and Academic Punishment for Performing Civic Duty***

Dear Chairman Meadows:

I am writing to bring your attention to a situation I have recently encountered regarding the important civic role of Jury Duty. I am a third year law student at Michigan State University College of Law ("Law School") at, ironically enough, your alma mater within your district in East Lansing, Michigan.

In October 2009, I received a Juror Summons and Order to Appear to serve as a potential juror within the 9th Circuit Court in Kalamazoo County for November 10, 2009.<sup>1</sup> I fully accept and even celebrate the opportunity to serve as a juror in the fulfillment of my civic duty as a citizen and future lawyer of our great state.

However, the date to which I was ordered to appear was right in the middle of the academic semester. I contacted officials in the Law School's Office of Student Affairs to inquire about the policies and procedures to fulfill my civic obligation while still meeting all necessary time requirements for attending law school. Due to requirements and standards beyond their control, my time in compulsory legal service as a juror would not be academically excused.<sup>2</sup>

As I will soon explain, this policy, along with a lack of explicit protection under state law, could have effectively postponed my graduation from law school, postponed my ability to take the bar exam, and hindered my ability to become an officer of the court within the state of Michigan. In

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<sup>1</sup> My permanent residence is in Portage, Michigan. During the work week (Mondays through Thursdays), I live in an on-campus apartment to save the time and expense of traveling each day to and from MSU College of Law's campus.

<sup>2</sup> I was able to successfully defer my jury service until my winter break in mid December by local procedure. Had the order date been earlier in the semester, service as a juror would have only been deferred until another date within the semester and therefore could have been extremely harmful to my schooling, my success in completing law school, and my ability to apply for the state bar.

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short, the cost to fulfill my civic obligation, as Michigan law and law school/ABA policies currently stands, could have been enormous.

As a law student, I am required, per American Bar Association (“ABA”) Standard 304(b),<sup>3</sup> to complete at least 45,000 minutes of regularly scheduled class sessions at the Law School. To put this standard into effect as well as satisfy ABA Standard 304(d),<sup>4</sup> the Law School requires students to attend eighty-five percent of scheduled class sessions for each class during an academic semester.<sup>5</sup> In real terms, if a class meets twice a week, students are permitted up to four unexcused absences per semester; if the class meets once a week, students are entitled to only two absences. In addition, students are granted an excused absence if their nonattendance is to due to another official school function such as moot court or other official activity.

Importantly, if a student fails to meet this attendance policy, he or she will not receive any academic credit, regardless of the final grade earned.

This policy is important to understand because, as it is currently written in accordance with ABA standards and deficient state law, **a law student called to serve as a juror is not excused by the law school and thereby punished for fulfilling his or her civic duty.** If the law student must serve as a juror for a period of two weeks or more (assuming no other unexcused absences), the student would effectively be unable to receive any credit for any of their classes for that entire academic semester.

With the cost of attending law school over \$1,000 per credit hour, serving on a jury could cost a law student tens of thousands of dollars by forcing the student to retake the academic semester due the above mentioned policy. The estimated cost of attending a semester of law school is approximately \$25,000, which includes tuition, books, fees, living expenses, and more. If that weren’t enough, a third year law student serving on a jury for two weeks or more would be prevented from sitting for his or her upcoming Michigan Bar Exam due to the Bar’s requirement of having graduated from an ABA accredited law school prior to sitting for the bar examination.

Michigan law currently provides various legal qualifications, exceptions, and protections to prevent unreasonable human cost or retaliation for citizens serving their civic duty as jurors.

Jurors must be eighteen years of age, English-speaking, and physically and mentally able to carry out the functions of a juror.<sup>6</sup> Employers within our state are prohibited from discharging, disciplining, or threatening to discharge or discipline an employee in relation to their service as a

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<sup>3</sup> MICHIGAN STATE UNIVERSITY COLLEGE OF LAW STUDENT HANDBOOK 2009-2010, § V(P)(1), *available at* <http://www.law.msu.edu/students/student-handbook.pdf> and AMERICAN BAR ASSOCIATION STANDARDS FOR APPROVAL OF LAW SCHOOLS 2009-2010 § 304(b), *available at* <http://www.abanet.org/legaled/standards/2009-2010%20StandardsWebContent/Chapter3.pdf>

<sup>4</sup> ABA STANDARDS, *supra* note 3, § 304(d) (“A law school shall require regular and punctual class attendance.”)

<sup>5</sup> STUDENT HANDBOOK, *supra* note 3, § V(B) (“Normally, a student who does not attend at least eighty-five (85) percent of the class meetings in a course... does not satisfy ABA Standard 304... [for] regular and punctual class attendance...”)

<sup>6</sup> MCL §§ 600.1307a(1)(a)-(c)

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juror.<sup>7</sup> Citizens, upon discretion of the Chief Judge, may be excused for health reasons or health issues of a family member.<sup>8</sup> Jurors may also be excused for cause<sup>9</sup> or by peremptory challenge by the parties.<sup>10</sup> Citizens over the age of 70 or having previously served on a jury within the preceding twelve months are also exempt.<sup>11</sup>

Michigan law even provides that high school students' service may be postponed until the end of the school year.<sup>12</sup> Yet Michigan law is silent as to college students, especially law students within the strict ABA standards as effectuated by the Law School.

The only chance for a college student faced with such circumstances is to petition the court<sup>13</sup> and hope the judge is persuaded by personal pleas of "material injury"<sup>14</sup> or "hardship."<sup>15</sup> Yet both are at the judge's wide and subjective discretion. Moreover, it is also very unlikely that an average non-law student would know about, much less petition for, this type of ruling by a Michigan judge within his or her discretion.

Beyond the law school/ABA setting, this shortcoming in the law is especially important to those students, including undergraduate, graduate, and law students, currently attending college or university in another state. Yet even those students attending in-state universities often attend school hundreds of miles away from their permanent residences and home counties.

Education, especially in this day in age and economic climate, is extremely important to the health and well-being of both the student and to the state and nation as a whole. It is the silver bullet to solving many of the social injustices and economic burdens suffered by Michigan's and the Nation's up-and-coming generation. As you recently so aptly stated in your press release, "The best way to get our economy going again is by building a top-notch workforce, and that

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<sup>7</sup> MCL § 600.1348(1) ("An employer or the employer's agent, who threatens to discharge or discipline or who discharges, disciplines, or causes to be discharged from employment or to be disciplined a person because that person is summoned for jury duty, serves on a jury, or has served on a jury, is guilty of a misdemeanor, and may also be punished for contempt of court.")

<sup>8</sup> MCL § 600.1335(1) ("The chief judge of the court to which a person is returned as a juror may excuse the person from serving when it appears that...the health of the juror or that of a member of his or her family requires his or her absence from court.")

<sup>9</sup> MCL § 600.1334(2) ("The judge presiding at the trial of an action may excuse jurors from attendance at that trial for cause.")

<sup>10</sup> E.g. MCL § 729.214

<sup>11</sup> MCL §§ 600.1307a(1)(d), (2)

<sup>12</sup> MCL § 600.1335(2) ("The chief judge of the court to which a person is returned as a juror shall postpone the person's term of service until the end of the school year if the person is a full-time student enrolled in and attending high school.")

<sup>13</sup> MCL § 600.1333 ("A person who is notified to attend as a juror may apply to the chief judge of the court to be excused or have his or her term of service postponed on any ground provided in this chapter.")

<sup>14</sup> MCL § 600.1335(1) ("The chief judge of the court to which a person is returned as a juror *may* excuse the person from serving when it appears that... the individual juror will be materially injured by his or her attendance...") (emphasis added)

<sup>15</sup> MCL § 600.1320(4) ("The trial judge, *at his or her discretion, may* grant a deferral of jury service to a person if the person claims that serving on the date he or she is called creates a hardship.") (emphasis added)

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means investing in education.”<sup>16</sup> Investing in education can mean more than money; it must also mean acknowledging and protecting the hard work and accomplishments already undertaken by Michigan’s college students, often at their own personal expense.

The solution to this problem seems readily apparent—extend MCL § 600.1335(2), what we can euphemistically call “the high school deferment,” to include students attending colleges or universities. This would allow college students to still serve their civic duty, yet would not punish them for their decision to go to college either inside or outside Michigan.

In the alternative, a new state law to prohibit colleges and universities from retaliating or in effect punishing Michigan’s college students would serve as yet another important way to invest in the education of Michigan’s sons and daughters.

I would ask you and the members of the Judiciary Committee, along with your counterparts in the Michigan Senate, to look into this issue. If I can provide any additional information or insight into this issue, please do not hesitate to contact me.

Thank you for your time and consideration.

Sincerely,

Philip L. Ellison

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<sup>16</sup> Press Release, State Representative Mark Meadows, *Lawmakers Join College Students in Fighting to Protect Michigan Promise* (Sept. 22, 2009), available at <http://069.housedems.com/news/article/lawmakers-join-college-students-in-fighting-to-protect-michigan-promise/students-from-across-michigan-descend-on-capitol-to-save-promise-scholarship/>.



Posted: March 3, 2010

## Judge's move to jail juror is criticized by state court

BY L.L. BRASIER  
FREE PRESS STAFF WRITER

Carmela Khury, a stay-at-home mom in Rochester Hills, was juggling child care and a jury summons.

When she was late the second day of jury selection because her mother was undergoing oral surgery, a backup nanny fell through and her husband was already at work, she called Oakland County Circuit Court. Told the judge would arrest her if she didn't show up, she arrived at court late along with her 8-month-old and 3-year-old.

Circuit Judge Leo Bowman found her in contempt, ordered her to sit as a spectator for the expected two-week-long murder trial and sentenced her to 24 hours in the county jail, to be served after the trial.

• **DISCUSS:** Do you think this judge crossed a line?

Khury was told to take her kids home Thursday, then sat in court Friday and Monday morning while her on-the-mend mother watched the children.

"It was very upsetting," Khury, 37, said Tuesday. Bowman's actions came under fire from the State Court Administrative Office, an arm of the Michigan Supreme Court.

Deborah Green, an official with the State Court Administrative Office, faxed a letter to Bowman on Friday, noting he had no authority to hold jurors and demanding that he stop doing so, or she would seek sanctions against him.

Bowman released Khury at noon Monday, but not before lecturing her on her responsibilities as

a citizen and asking whether she had learned her lesson. Bowman, through his staff, declined to comment Tuesday. It is not the first time Bowman has been admonished for rough treatment of potential jurors. Green told Bowman to end heavy-handed treatment of potential jurors last summer following complaints.

Court officials say judges suspicious of jurors trying to evade their civic duty have only two options -- to leave them on the panel or dismiss them.

Khury wasn't the only potential juror to have a run-in with Bowman among the pool assembled for the latest murder trial against Jerome Hamilton, accused of murdering a Rib Rack restaurant manager in Lathrup Village.

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In addition to holding Khury for days, the judge also detained Ramesh Sapra, a businessman, who told Bowman jury service would cause his small company harm because it was facing an upcoming deadline.

"I don't know what I did wrong," Sapra said outside the courtroom Friday. "I answered all of his questions, and he was still angry."

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Sapra said he became a U.S. citizen more than 30 years ago, and had looked forward to someday serving on a jury. "Not anymore," he said.

Bowman dismissed Sapra from his detention on Friday afternoon without explanation.

In other cases, Bowman detained for days: a Wayne State University medical student because he said his midterm exams would interfere with his jury duty; a woman who said she could not serve on a sex case because she had once been sexually assaulted, and a woman who said her husband's pending travel overseas would create a hardship for her family because she had no day care for her small children.

Legal experts said Bowman's decision to order jail time for Khury violated her constitutional rights.

"When you are imposing punishment, and that's what jail is, it becomes criminal contempt," said Wayne State law professor Peter Henning. "She's entitled to due process, a hearing and an attorney."

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